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**OFFICE OF DIRECTOR
GROUP**

In re Application of:
YAMANOBE *et al.*
Serial No.: 09/041,639
Filed: March 13, 1998
Attorney Docket No.: 35.C12641

**DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT**

This is a decision on the petition under 37 C.F.R. § 1.181, filed May 31, 2001, to withdraw the holding of abandonment of the above-identified application or, conditionally, to revive the application under 37 C.F.R. § 1.137(a).¹

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a response to the Office action mailed September 12, 2000. A Notice of Abandonment was mailed on April 23, 2001.

Petitioner asserts that Office action mailed on September 12, 2000, were not received at the correspondence address. To support this assertion, petitioner provides statements by Scott D. Malpede and Howard S. Greenberg, and copies of the docket report where the action would have been entered.

A review of the written record indicates no irregularity in the mailing of the Notices, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of

¹ The petition has been treated under 37 C.F.R. § 1.181.

"Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The petition is accompanied by a showing that establishes non-receipt of the Office action mailed September 12, 2000. As such, the petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the Technology Center 2800 support staff for remailing the Office action. The shortened statutory period for response set therein will be reset to run from the date the Office action is remailed. Extensions of time are available under 37 C.F.R. § 1.136.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-0519.



Edward J. Glick, Special Programs Examiner
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EJG/cel